

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 110 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
2 to 5 No

YUSUFBHAI UMARBHAI MALEK

Versus

STATE OF GUJARAT

Appearance:

MR NS DESAI for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 12/03/98

ORAL JUDGEMENT

1. Heard Ld.Advocate Mr.N.S.Desai appearing for petitioner. Rule. Mr.A.J.Desai, Ld.APP waives service of rule on behalf of respondent-State.

2. Being aggrieved and dissatisfied by the orrder passed by the Ld.Addl.Sessions Judge, Nadiad, Dist.Kaira below Exh.7 on 2.3.98 in the matter of Sessions Case

No.288/97 the petitioner has preferred the present revision application.

3. That vide the impugned order dated 2.3.98 below Exh.7 in the Sessions Case No.288/97 the Ld.Addl.Sessions Judge has rejected the prayer made by the present petitioner as accused No.2 of the said Sessions Case No.288/97 to discharge him from the allegations made in the chargesheet filed by Nadiad Police.

4. The present petitioner along with three other accused is chargesheeted by the PSI, Anklav, Tal.Petlad, Dist.Kaira for having committed offence made punishable under sections 302, 120B and 34 IPC. It is the case of the prosecution as apparent from the material produced on the record that one Kantaben, Wd/o Manharbhai Iswarbhai Patel lodged the FIR with the Anklav police station at about 1100 pm on 16.9.97 and stated that one of his son named, Jitu @ Mahesh had an affair with the sister of suspected accused No.1--Mukeshbhai Vallabhbhai Pagtel. That the suspected accused No.2--Harish Nagjibhai is the Brother-in-law of said gair--Alpa. That on account of said affair the relations between the suspected accused and the complainant and her son were strained and the suspected accused had threatened the complainant and her son to stop meeting Alpa. That thereby Complainant--Kantaben had sent her son to Ankleswar and he resided there for sometime. That prior to about three months of the incident Jitu @ Mahesh had returned to the village Koshimba at his mother's place and was residing there. Said Jitu @ Mahesh was missing since 28.7.97. That according to his mother when Jitu had left he had worn blue coloured pant and shirt and has slippers on his legs. That despite making enquiry she did not find any information about his son Jitu. However, on the previous night of lodging FIR she was told by Hemantkumar one of the friends of deceased Jitu that at about 9.30 to 1000 Jitu was with him and they were enjoying a party eating sweet-meets. That after Jitu had separated he did not know about where he had gone. The complainant Kantaben has further stated that she suspected that on account of affair with Alpa the suspected accused Mukeshbhai Vallabhbhai and Harish Nagjibhai may have committed murder in conspiracy and therefore she has requested to enquire into the matter.

5. That having recorded the FIR on 16.9.97 the Anklav police started investigation and recorded the statements of the friends of deceased Jitu, Hemantbhai Brahmbhatt and others. It is the prosecution case that the dead body of Jitu was recovered from unused well

situated in one of the corners of said village on 17.9.97. That thereafter during the investigation one of the suspects Navinbhai @ Pako Dahyabhai Valand and the name of the present petitioner were found and at the instance of the petitioner a discovery panchnama was drawn and the police found a rope alleged to have been used in the commission of crime. That during further investigation the name of the present petitioner was also disclosed and thereby the police have added said Navinbhai @ Pako Dahyabhai Valand and the present petitioner as accused Nos 3 & 4 in the said crime. That on completion of investigation the police has submitted the chargesheet and hence the case was registered as Session Case No.288/97 against all the four accused in the court of Sessions Judge, Nadiad, Dist.Kaira.

6. That on 2.3.98 present petitioner had moved an application-Exh.7 to the court of the Ld.Sessions judge and claimed that there is no sufficient ground to proceed against him in respect to the allegations made in the chargesheet and as such he should be discharged.

7. That as stated hereinabove, the court heard the application and decided the same vide impugned order rejecting the prayer of the accused petitioner.

8. Mr.Desai, Ld.advocate appearing for petitioner has vehemently urged that in the instant case the incident has occurred on 28.7.97, the date since the deceased--Jitu was missing. However, the FIR has been lodged by the mother of the deceased on 16.9.97 at about 1100 pm. That thereafter the police has recorded the statements of witnesses on 17.9.97. The mother of the deceased Jitu has not given the name of the present petitioner as one of the suspects in the FIR. That the dead body of the deceased has been identified only from the description of clothes. That rope alleged to have been used in the commission of crime is of different length than the description of the rope given by one of the accused. Under such circumstances, there is no sufficient ground as per the police papers to proceed against the present petitioner as accused No.4 in the sessions case. That the Ld.Addl.Sessions Judge has committed error of law while deciding the said application and thereby the present revision application should be allowed and the petitioner be discharged from the allegations made against him in the chargesheet.

9. As against that Ld.APP Mr.Desai has taken me through the statements of witnesses produced on record by the petitioner along with documents like FIR, discovery

panchnama etc. It is submitted by the Ld.APP that the statements as well as facts recorded in discovery panchnama etc. suggest the circumstances making a prima facie case against the present petitioner as one of the accused for the crime of said sessions case and thereby the Ld.Addl.Sessions Judge is justified in rejecting the application.

10. Now there can not be any dispute regarding legal proposition that before framing the charge the sessions court is required to consider the police papers so as to ascertain whether there exists sufficient ground for proceeding against the accused. The expression "sufficient ground for proceeding against the accused" which is known as "a prima facie case" connecting the accused with the crime either directly or indirectly. That in the instant case police has recorded the statements of two witnesses--Hemantkumar and Bharatbhai Somabhai. Both of them have stated that on the previous night of the incident the deceased--Jitu was with them and they enjoyed sweet-meets on account of celebration hosted by Hemantkumar for his promotion. That after taking the sweet-meet they were playing cards and at a relevant time present petitionr along with accused Nop.3--Navinbahaai had come there and they had called the deceased--Jitu by giving signal. That thereafter the deceased--Jitu had gone with them and since then Jitu has been missing. Thus there is direct evidence of two witnesses connecting the present petitionr as a last person with whom the deceased was not only seen but deceased has proceeded in his company. Further more, at the instance of present petitioner the police has carried out discovery panchnama wherein a rope alleged to have been used in the commission of crime for strangulation was discovered. That medical evidence collected by the police authorities suggests that deceased died prior to he was submerged in the water. All these circumstances are not simple suspicions but are of nature of grave circumstances providing sufficient ground to proceed against the accused.

11. On the basis of abovestated discussion in my opinion the order passed by the Ld.Addl.Sessions Judge, dated 2.3.98 below Exh.7 rejecting the application of the present petitionr does not require any interference. Present revision application fails and deserves to be rejected.

12. Revision Applciation stands disposed of as rejected. Rule is discharged. No costs.

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murthy